

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes
State Courts Building
1501 W. Washington
Conference Room 119 A/B
Phoenix, AZ
June 3, 2011

MEMBERS PRESENT:

Honorable Linda Gray	Honorable Peggy Judd
Honorable Terri Proud - <i>telephonic</i>	Ella Maley
Honorable Lela Alston	Donnalee Sarda - <i>telephonic</i>
Theresa Barrett	Russell Smoldon
Sidney Buckman	Steve Wolfson
Laura Sabin-Cabanillas	Brian W. Yee
Daniel Cartagena	
William Fabricius - <i>telephonic</i>	
Honorable Katie Hobbs	
David Horowitz - <i>telephonic</i>	
Jeffery Hynes - <i>telephonic</i>	

MEMBERS ABSENT:

Todd Franks	Patty O'Berry
Jack Gibson	Ellen Seaborne
Grace Hawkins	David Weinstock
Ms. Danette Hendry	Honorable Sylvia Allen
Honorable Leah Landrum Taylor	

GUESTS:

Amy Love	Administrative Office of the Courts
Katy Proctor	Arizona State Senate
Kay Radwanski	Administrative Office of the Courts

CALL TO ORDER

Without a quorum present, the June 3, 2011, meeting of the Domestic Relations Committee (DRC) was called to order at 10:00 a.m. by Senator Linda Gray, Co-Chair.

ANNOUNCEMENTS

Senator Gray made the following announcements:

DRC member, Judge Sharon Douglas, resigned from the committee. Her service to the committee was acknowledged. The following new appointees were introduced and welcomed to the committee:

- Representative Terri Proud, Co-Chair
- Representative Lela Alston
- Representative Katie Hobbs
- Representative Peggy Judd

LEGISLATIVE UPDATE

Ms. Amy Love, AOC Legislative Liaison, updated the committee on legislation passed during the recent session. The bills can be found in [Appendix A](#).

SUBSTANTIVE LAW / COURT PROCEDURES WORKGROUP UPDATE

Members, Steve Wolfson and Brian Yee, Co-Chairs of the Substantive Law/Court Procedures Workgroup (SL/CP), provided an update on the workgroup's progress with custody statute review. Mr. Wolfson briefly reviewed the genesis and history of the Ad Hoc Custody Workgroup (AHCW) that began revisions on the custody statute in 2010. In April 2011, the AHCW passed their work product to the SL/CP. The workgroup has met several times over the last three months and will continue to work on a final recommendation to the DRC. He explained that the revisions to date have consisted of some reorganization, revisions, and significant changes in terminology. The term "custody" has been replaced by the term "parental decision-making." There is also a new section for special circumstances that addresses such issues as domestic violence, now termed "intimate partner violence" (IPV), including coercive control, and substance abuse. Mr. Wolfson explained this is a slow process as the workgroup has sought and continues to seek input from nationally-renown experts in the field and the Arizona State Bar Family Law Section members. The workgroup has several meetings scheduled during the summer and they hope to have the project completed by September.

Dr. Yee added that the workgroup is still in the very early stages of review and emphasized the intent is to continue taking the time to gather input from experts and obtain feedback from the public. Due to the sheer depth and breadth of the document, it is very much a work-in-progress, and it is possible the final product presented to the DRC may look quite different from the product revealed at today's meeting.

Senator Gray noted that the current draft should be provided to Legislative Council so they can prepare the proposed statutes in the proper bill format. Senator Gray stated she was glad to see the term "custody" replaced with "parental decision-making" but, did not like replacing the term "domestic violence" with "intimate partner violence" (IPV) since the remainder of the statute uses the term "domestic violence."

CALL TO THE PUBLIC

Member of the general public, Terry Decker, stated the following:

- He has attended most of the workgroup meetings and is interested in reduced conflict for children of divorce.
- Quoted statistics regarding suicide among veterans who are involved in the family court and sociopaths who come from fatherless homes.
- Does not believe references to domestic violence should be in the custody statute. Believes it would be prudent to have a stand-alone bill for domestic violence issues.
- The bill should say equal parenting time and joint custody are in the best interest of the children.

General public member, Karen Duckworth, discussed the following:

- Public input is paramount in the process and thanked the workgroup for giving her the opportunity to contribute in the meetings.
- She is concerned about the “overexpansion of the language about domestic violence” in the custody statute. It has created unnecessary conflict.
- There need to be laws in place regarding coercive control, but they should not be written into family laws. She believes it would lead to the negative consequences of persons reading about coercive control in the statute and then making false allegations against the other parent.

Member of the general public, Brent Miller, expressed the following:

- The statute is deliberately wordy, making it difficult for a lay person representing themselves and that it also encourages litigation.
- Believes members of the SL/CP are not representative of actual parents.
- The interest holders need to be removed from the workgroup and replaced with actual stake holders.
- Members of the public should be actively participating with the workgroup during this process.

Member of the general public, Michael Espinoza, voiced the following:

- Agreed with the comments of Ms. Duckworth that domestic violence language belongs in the criminal code rather than the custody statute.
- The definition of “legal parent” is incorrect as it is cited elsewhere in the statute with a different definition.
- The gender of the parents should not be specified or mentioned.
- Members of the public have put forward many proposals to the workgroup but they are just pushed aside.
- Believes the public agrees with the workgroup on the custody issues, it is only the domestic violence aspect they disagree with, so the statute should go forward without the domestic violence language rather than continuing to hold up the process.

General public member, Joi Davenport, observed the following:

- The language provided from the AHCW is revolutionary and will help anyone involved in family court, including pro pers.
- Mental, emotional, and verbal abuse are not addressed in family court. Unless there are obvious signs of physical abuse, domestic violence is disregarded. This is why domestic violence needs to be in the statute.
- Mental, emotional, and verbal abuse impact children significantly.
- Ms. Davenport asked why the opposing members of the public are so afraid of having the domestic violence references in the custody statute.

Member of the general public, Debra Pearson, stated the following:

- The proposed language needs to be looked at – it favors women and is prejudiced against the father.
- She was a previous victim of verbal abuse and did not need the court to help her get out of her situation. Courts just make a bigger mess of things.
- The system already favors mothers.

Following the comments from the general public, Senator Gray requested input from members. Several members responded to the general public comments. Laura Sabin-Cabanillas stated she respects the feelings of all who spoke, however, she took exception to comments regarding the composition of the workgroup – specifically that there are no “actual parents” on the workgroup, rather there are “interest holders.” She stated that she is a non-custodial parent and has no monetary stake in the outcome of the final product. Furthermore, she stated she is concerned because emotional abuse is the most prevalent type of domestic violence that happens in the home and it’s actually the most damaging to the children. She believes it is crucial that the coercive control and domestic violence language remain in the custody statute.

APPROVAL OF DRAFT MINUTES

A quorum now having been achieved, the minutes of the December 3, 2010, DRC meeting were presented for approval.

MOTION:	To approve the December 3, 2010, DRC draft meeting minutes as presented.
SECOND:	Motion seconded.
VOTE:	Passed unanimously

Mr. Wolfson stated he took exception on behalf of the workgroup to some of the comments from the general public. The perception that members of the workgroup have a financial stake in the outcome is untrue. He pointed out members Danny Cartagena and Robert Reuss are both parents on the workgroup. Other members are public servants. Their time is volunteered and they receive no compensation. The meeting agendas are published 24 hours in advance of the meetings pursuant to open

meeting law and are therefore available to the general public. The work being done by the workgroup is aimed at making the rules easier and educating everyone as part of the process. However, the custody statute is complicated in parts because these issues and court determinations are complicated.

Several workgroup members reiterated Mr. Wolfson's comments. Bill Fabricius, a non-custodial parent with no stake in the outcome, commented that the comments of the general public are recorded so that their insights can be used as a tool. He suggested it would be better for the general public to work together with the workgroup rather than make general criticisms. Moreover, he suggested that anyone can submit alternate language to the workgroup at any time. Danny Cartagena, a joint-custody parent, noted that he was falsely accused of domestic violence in his personal situation and pointed out that the statute language refers to a pattern of coercive behavior, versus a one-time incident. In addition, he noted that they are looking very closely at the possibility of including language regarding false allegations. Sid Buckman, stressed that the workgroup has endeavored to write a comprehensive bill that is unbiased and research-based, while striving to keep it as simple and user friendly as possible.

At this time, the committee began to address the language of the statute. There was some discussion of placing the domestic violence language toward the back of the bill. There were several suggested language changes from Senator Gray that were made to the statute. There was lengthy discussion about using the term "domestic violence" as defined in section A.R.S. § 13-3601 rather than "intimate partner violence" or using both concepts as some other states have done. Senator Gray stated that the changes incorporated to the statute today will go to legislative council for review and then come back to the workgroup for continued work.

GOOD OF THE ORDER

Senator Gray informed members that legislators will be receiving a letter to the effect that any domestic-related legislation must come before the DRC before moving forward at the legislature.

ADJOURN

Meeting was adjourned at 11:44a.m.

NEXT MEETING:

Friday, September 16, 2011
Conference Room 345 A/B
State Courts Building
1501 W. Washington
Phoenix, Arizona

**Domestic Relations Committee
Legislative Update
June 3, 2011**

HB 2302: PROTECTED ADDRESS; SECRETARY OF STATE

CH 173

Representative J.D. Mesnard

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2302s.pdf>

Amends A.R.S. § 16-153, *Voter registration; confidentiality*, to include border patrol agents in persons eligible to request that the general public be prohibited from accessing the address, telephone number, and voting precinct number contained in their voter registration record.

The court may seal the change of name application and judgment on request if a person is protected under an order of protection or is a victim of stalking pursuant to A.R.S. § 13-2923, *Stalking, classifications, definitions*. If the offense took place in another jurisdiction, but would be classified as a violation or attempted violation of A.R.S. § 13-2923 if committed in this state, these provisions still apply. A person who obtained a judgment on or after Jan. 1, 2009, may request that the court seal the application and judgment pursuant to this section.

Directs the Secretary of State (SOS), by December 31, 2012, to establish the Address Confidentiality Program (ACP). The ACP allows victims of domestic violence, sexual offenses, or stalking to keep their residential address confidential, by giving them a substitute lawful address. Outlines what the application will include and what is considered evidence of domestic violence, a sexual offense, or stalking.

Allows an ACP participant to be served by certified or registered mail with any process, notice, or demand required by law and clarifies that this provision does not prescribe the only or necessary means of serving an ACP participant. Adds five days to the timeframe within which an ACP participant legally has a right to act, if they were served in accordance with law by mail or first-class mail. This provision does not apply if the time period is otherwise corrected by a court rule.

Individuals are certified into the ACP for four years following the date of filing. Certification may be renewed by filing a renewal application with the SOS within 30 days of the current certification expiring. ACP participants may withdraw certification by filing a request for withdrawal that is acknowledged before a notary public. If the ACP participant fails to notify the SOS of a change in legal name, current address, telephone number, or knowingly submits false information, certification of the program participant can be cancelled. Requires the SOS to send notice and the reason for cancellation to the program participant if it is determined that there is reason for cancelling certification. The program participant has 30 days to appeal the cancellation decision. Under A.R.S. § 41-155, the SOS cannot disclose any address or telephone number of an ACP participant except under the following circumstances:

- The information is required under a court order
- The SOS grants a request by a state or local government entity pursuant to A.R.S. § 41-157, *Request for disclosure*

Any person to whom an ACP participant's actual address or telephone number has been disclosed cannot further disclose the information to any other person unless required by court order or as otherwise provided by law. The SOS shall immediately notify an ACP participant if it has disclosed a participant's information.

If an ACP participant is involved in divorce proceedings, child support, or the allocation of parental responsibilities or parenting time, the SOS must notify the court that the participant has been certified and is part of the ACP.

Anyone who knowingly and intentionally obtains or discloses an ACP participant's information is guilty of a Class 1 Misdemeanor.

The ACP participant is responsible for requesting that a state or local government entity use the substitute address as the participant's residential, school, or work address.

Except as otherwise provided for in the statute or by order of the court, if a participant submits a current and valid address confidentiality program card to the court, the court shall accept the substitute address as the home, work, and school address for the participant. The court may make a photocopy of the card and shall return the card to the participant.

Outlines how participants shall be able to register to vote and to vote.

A state or local government agency requesting disclosure of an ACP program participant's actual address must make the request in writing on letterhead. This provision does not apply to the court. The SOS must notify the participant of a request for address disclosure and allow the participant an opportunity to be heard regarding the request. The SOS must provide the participant with written notification if a request for disclosure has been granted or denied. Notice or opportunity to be heard shall not be afforded to the participant if the request for disclosure is made by a state or local law enforcement agency conducting a criminal investigation or if providing notice would jeopardize an ongoing criminal investigation or the safety of law enforcement personnel. The director of the program, or the director's designee, must be available to state and local governments 24 hours a day for purposes of a request for disclosure.

Outlines an expedited disclosure process to be used by a court, criminal justice official or agency, or a probation department when disclosure is required pursuant to a trial, hearing, proceeding, or investigation involving an ACP participant. An official or agency obtaining information under the expedited disclosure process shall certify to the SOS that it has a system in place to protect the confidentiality of a participant's actual address from the public and personnel involved in the trial, hearing, proceeding, or investigation. A court or administrative tribunal may seal the portion of any record containing an actual address.

Permits a state or local government agency, at its discretion, to use an actual address in any document or record filed with a court or administrative tribunal if, at the time of filing, the document or record is not a public record.

Effective January 1, 2012, adds A.R.S. § 12-116.04, *Address confidentiality program assessment*, that adds a \$50 assessment for a person who is convicted of a domestic violence offense, a sexual offense, or stalking. The court may waive all of or a portion of the assessment if the court finds that the defendant is unable to pay the assessment. 95% of the assessment goes to the address confidentiality fund and 5% is retained by the clerk of the court for administrative costs.

Defines “actual address,” “address confidentiality program,” “applicant,” “application assistant,” “domestic violence,” “program participant,” “public record,” “sexual offense,” “stalking,” “state or local government entity,” and “substitute address.”

The SOS program sunsets July 1, 2021.

Statutes amended: A.R.S. § 12-601, 16-153, 39-123, 39-124

Statute enacted: A.R.S. § 12-116.05

SB 1080: CUSTODIAL INTERFERENCE; CLASSIFICATION

CH 224

Senator Linda Gray

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1080h.pdf>

A parent who has no legal right to do so and either takes, entices, or withholds a child from the other parent before the entry of a court order, or has joint legal custody of the child and withholds the child from the other custodian, is not guilty of custodial interference if the person has filed an emergency petition regarding custodial rights, has received a hearing date and the person has a good faith and reasonable belief that the child will be in immediate danger if left with the other parent.

The law defining the crime of custodial interference is clarified to state that the Class 1 Misdemeanor classification applies only if the child or incompetent adult is returned by the parent or defendant, or the agent of either, no later than 48 hours after the child was taken.

It is a Class 1 Misdemeanor to intentionally make a false report of vulnerable adult abuse or neglect to a law enforcement agency or to a person who is required by law to report the information to a law enforcement agency.

Statute amended: A.R.S. § 13-1302

Statute enacted: A.R.S. § 13-2907.04

SB 1187: DISSOLUTION OF MARRIAGE; LEGAL SEPARATION

CH 305

Senator Linda Gray

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1187h.pdf>

Makes various changes to the required educational programs provided by each county's Superior Court regarding divorce. Specific standards must be implemented by January 1, 2013, including the following:

- The emotional, psychological, financial, physical and other effects of divorce on adults and children
- Alternative options to divorce
- Resources available to improve or strengthen marriage
- The legal process of divorce and options available for mediation
- Resources available after divorce

If either party wishes to extend the 60 day waiting period after filing a petition for conciliation, they must file a petition with the court that explains the reason for the extension and includes a plan for reconciliation and counseling. The waiting period may be extended up to 120 days, for good cause, during which time neither party may file for annulment, dissolution of marriage, or legal separation. The court shall deny exemption if the other party objects with good cause.

Statutes amended: A.R.S. § 25-351, 25-381.17, 25-381.18

SB 1192: CHILD SUPPORT MODEL; REVIEW; REPORT**CH 228****Senator Linda Gray**<http://www.azleg.gov/legtext/50leg/1r/bills/sb1192s.pdf>

The Supreme Court shall not adopt the Child Outcome Based Support model (COBS) unless the court selects a nationally recognized independent research organization to review the methodology used in creating the COBS model and the effect the model would have on the courts and on child support for families in Arizona.

Contains a *legislative intent* clause.

Session Law, no statutes affected.

SB 1283: CHILD CUSTODY; MILITARY FAMILIES**CH 346****Senator Kyrsten Sinema**<http://www.azleg.gov/legtext/50leg/1r/bills/sb1283s.pdf>

Removes the requirement that a custodial parent who is a member of the US armed forces file a military family care plan prior to any deployment. Requires the court to enter a temporary order modifying parental rights during a period of military deployment or mobilization on motion of either parent if the deployment or mobilization will have a material effect on the military parent's ability to exercise parental rights and responsibilities or parent-child contact. Requires the court to allow a parent to present testimony and evidence by electronic means on motion of a deploying parent if reasonable advance notice is given and good cause is shown. The court is required to hear motions for modification due to deployment as expeditiously as possible.

Permits a military parent to request the court to delegate parenting time to a family member or other individual with whom the child has a close and substantial relationship if the court finds that doing so is in the child's best interest. Prohibits the court from delegating parenting time to a person who would otherwise be subject to limitations. Directs the parents to utilize the dispute resolution process outlined in their parenting plan unless excused by the court for good cause. Clarifies that a court order delegating parenting time does not establish a separate right to parenting time for a person other than the parent.

Temporary modification orders must include a specific transition schedule to facilitate a return to the redeployment order within ten days after the deployment ends, taking into consideration the child's best interests.

Prohibits the court from entering a final order to modify parental rights and parent-child contact in an existing order until 90 days after the end of temporary military duty, deployment, activation or mobilization orders. Applies to the parent with whom the child resides a majority of the time and an exemption is made if both parents agree to a modification.

Prohibits the court from considering absence caused by deployment or mobilization or the potential for future deployment or mobilization as the sole factor supporting a real, substantial and unanticipated change in circumstances.

Statute amended: A.R.S. § 25-411

SB 1373: Governmental mall commission; public terms (Sen. Antenori)<http://www.azleg.gov/legtext/50leg/1r/bills/sb1373p.pdf>

Strike everything amendment.

In pertinent part, expands the list of exceptions as to what is considered communal property between a married couple to include any property acquired as a result of service the U.S. armed forces.

In a proceeding for dissolution of marriage, the court shall divide communal property without regard to separate property.

Titles affected: 23, 25, 28, 41

SB 1396: DOMESTIC RELATIONS; NOTIFICATION REQUIREMENTS

CH 236

Senator Sylvia Allen

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1396s.pdf>

Requires the court to provide written notice to all parties in a custody proceeding of the right to request conclusions of fact and law regarding child custody, relocation requests, spousal maintenance, community property, community debt, and child support, if contested. One must file a written request with the court before the trial or evidentiary hearing to request conclusions of fact and law. If a request is submitted before the trial or evidentiary hearing, the court will make conclusions of fact and law as part of the final decision.

Statute enacted: A.R.S. § 25-331